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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of Section	)	CS Docket No. 96-46
302 of The Telecommunications	)	Notice of
Act of 1996	)	Proposed Rulemaking
	)	
Open Video Systems	)	

**COMMENTS OF THE CONSUMER SERVICES DEPARTMENT,  
METROPOLITAN DADE COUNTY, FLORIDA**

**I. INTRODUCTION**

On March 11, 1996, the Federal Communications Commission ("FCC or Commission") released its Notice Of Proposed Rulemaking in CS Docket No. 96-46 ("OVS NPRM") which requests comments on implementing the provisions in the Telecommunications Act of 1996 (1996 Act) that pertain to Public, Educational and Governmental ("PEG") access obligations for Open Video System ("OVS") operators; whether cable operators should be permitted to become OVS operators; and the OVS certification process. Metropolitan Dade County ("The County") firmly believes that, at a minimum, all existing and future PEG services available to cable television subscribers must also be provided to all OVS subscribers. Additionally, the Commissions rules should be flexible enough to allow local government and OVS operators to work together to establish new enhanced services as community needs may dictate. The County further believes that cable operators should not be allowed to convert their systems into OVS because this will decrease intersystem competition and will reduce the prospects for competition. Local governments must have a role in the certification process to ensure that local communications requirements, such as educational and live government proceedings are met.



## II. DISCUSSION

### **A. OVS OPERATORS SHOULD PROVIDE EXISTING AND FUTURE PEG CAPACITY, FACILITIES, EQUIPMENT AND OPERATIONAL SUPPORT THAT IS THE EQUIVALENT TO THAT PROVIDED BY CABLE OPERATORS.**

It is only by establishing an equivalent framework for the provision of PEG services on OVS systems that the FCC will ensure that PEG programmers are able to provide the same quality and diversity of programming to OVS customers that such programmers are now providing to cable subscribers.

In response to the Commission's inquiry regarding whether the 1996 Act's OVS PEG requirements might be met by the OVS operator "sharing with the cable operator the capital and operating expenses related to PEG channels"<sup>1</sup>, the County believes that such an arrangement could result in PEG obligations being halved, not duplicated as intended by Congress. Such a sharing arrangement might constitute a reduction of franchise obligations on the part of the cable operator. The County believes that the FCC's OVS rules must include the concept of equivalent obligations.

It is important to note that PEG obligations are founded on the existing and future PEG-related needs of the entire community as ascertained by the franchising authority based upon extensive input from the community. Therefore, such needs apply to all members of the community, including those that subscribe to OVS systems rather than the incumbent cable provider.

Regarding channel positioning, the FCC's OVS implementation rules should enable PEG programmers to telecast their services such that they are received by the subscriber on the same channel for the OVS system as for the cable system. As the Commission has noted in the OVS NPRM, technologies such as channel mapping could provide ready technical solutions to this problem.

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<sup>1</sup> See OVS NPRM at 57.

**B. PEG SERVICES SHOULD BE PROVIDED TO ALL SUBSCRIBERS TO THE OVS SYSTEM REGARDLESS OF THE OTHER PROGRAMMING THAT THEY RECEIVE**

Congress has reaffirmed the importance of PEG channels stating in one instance that requirements for PEG channels enable “a wide diversity of information sources for the public<sup>2</sup>. Accordingly, it would be contrary to long standing congressional intent and inconsistent to develop rules that did not provide PEG programming to all subscribers to the OVS system. In this regard, a tier of PEG services could be established, such that they are automatically provided to any OVS service subscriber.

Additionally, the PEG services of an OVS provider must be made easily identifiable, as part of any system navigational devices.

**C. CABLE OPERATORS SHOULD NOT BE ALLOWED TO CONVERT THEIR CABLE SYSTEMS INTO OVS**

The intent of the 1996 Act is that OVS assist in introducing vigorous competition in entertainment and information markets in both intersystem and intrasystem manner<sup>3</sup>. If cable operators are allowed to convert their systems into OVS, intersystem competition would be decreased. Even intrasystem competition could be impeded because additional transmission platforms conceivably would not be established until after it was demonstrated that the incumbent’s available bandwidth was insufficient to meet demand.

Additionally, such an action by the FCC could serve to unlawfully impair existing franchise agreements, and inhibit the development of existing and future cable related services as part of franchise renewals to meet community needs. Such an action by the Commission would be distinctly contrary to the public interest.

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<sup>2</sup> See House of Representatives Report No. 934, 98 Congress, Second Session at 30 (1984).

<sup>3</sup> See OVS NPRM at 6 and 10.

**D. LOCAL GOVERNMENT MUST HAVE A ROLE IN THE OVS  
CERTIFICATION PROCESS**

The County believes that it must have a role in the certification process to ensure that a local Dade County OVS provider will meet its PEG obligations under the 1996 Act.


One way to gain input would be to require the filing of certain information as a prerequisite to the filing of a request for certification. This information could include documentation detailing how PEG requirements will be met by a certain OVS operator, and a statement from local authorities that analyzes whether the stipulated PEG obligations would be consistent with or equivalent to those provided by the incumbent cable operator.

Additionally, the County believes that OVS providers should also ensure that the FCC's Emergency Alert system ("EAS") requirements and local emergency override requirements be applicable to OVS.

**III. CONCLUSION**

Based upon the foregoing, we respectfully request the Commission to carefully consider the comments submitted by the County in this proceeding

Respectfully submitted,

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